

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3402
OFFERED BY MS. SCHAKOWSKY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Calling Card Consumer
3 Protection Act”.

4 SEC. 2. DEFINITIONS.

5 For purposes of this Act, the following definitions
6 apply:

7 (1) The term “Commission” means the Federal
8 Trade Commission.

9 (2) The term “prepaid calling card” has the
10 meaning given the term “prepaid calling card” by
11 section 64.5000(a) of the Federal Communications
12 Commission’s regulations (47 C.F.R. 64.5000(a)).
13 Such term shall also include calling cards that use
14 VoIP service or a successor protocol. Such term
15 shall also include an electronic or other mechanism
16 that allows users to pay in advance for a specified
17 amount of calling. Such term shall not include—

1 (A) calling cards or other rights of use
2 that are provided for free or at no additional
3 cost as a promotional item accompanying a
4 product or service purchased by a consumer;

5 (B) any card, device, or other right of use,
6 the purchase of which establishes a customer-
7 carrier relationship with a provider of wireless
8 telecommunications service or wireless hybrid
9 service, or that provides access to a wireless
10 telecommunications service or wireless hybrid
11 service account wherein the purchaser has a
12 pre-existing relationship with the wireless serv-
13 ice provider; or

14 (C) payphone service, as that term is de-
15 fined in section 276(d) of the Communications
16 Act of 1934 (47 U.S.C. 276(d)).

17 (3) The term “prepaid calling card provider”
18 has the meaning given the term “prepaid calling
19 card provider” by section 64.5000(b) of the Federal
20 Communications Commission’s regulations (47
21 C.F.R. 64.5000(b)). Such term shall also include—

22 (A) a provider of a prepaid calling card
23 that uses VoIP service or a successor protocol;
24 and

1 (B) a provider of a prepaid calling card
2 that allows users to pay in advance for a speci-
3 fied amount of minutes through an electronic or
4 other mechanism.

5 (4) The term “prepaid calling card distributor”
6 means any entity or person that purchases prepaid
7 calling cards from a prepaid calling card provider or
8 another prepaid calling card distributor and sells, re-
9 sells, issues, or distributes such cards to one or more
10 distributors of such cards or to one or more retail
11 sellers of such cards.

12 (5) The term “wireless hybrid service” is de-
13 fined as a service that integrates as one service of-
14 fering both commercial mobile radio service (as de-
15 fined by section 20.3 of the Federal Communications
16 Commission’s regulations (47 C.F.R. 20.3)) and
17 VoIP service.

18 (6) The term “VoIP service” has the meaning
19 given the term “interconnected Voice over Internet
20 protocol service” by section 9.3 of the Federal Com-
21 munications Commission’s regulations (47 C.F.R.
22 9.3). Such term shall include any voice calling serv-
23 ice that utilizes a voice over Internet protocol or any
24 successor protocol in the transmission of the call.

1 (7) The term “fees” includes all charges, fees,
2 taxes, or surcharges applicable to a prepaid calling
3 card that are—

4 (A) required by Federal law or regulation
5 or order of the Federal Communications Com-
6 mission or by the laws and regulations of any
7 State or political subdivision of a State; or

8 (B) expressly permitted to be assessed
9 under Federal law or regulation or order of the
10 Federal Communications Commission or under
11 the laws and regulations of any State or polit-
12 ical subdivision of a State.

13 (8) The term “additional charge” means any
14 charge assessed by a prepaid calling card provider or
15 prepaid calling card distributor for the use of a pre-
16 paid calling card, other than a fee or rate.

17 (9) The term “international preferred destina-
18 tion” means one or more specific international des-
19 tinations named on a prepaid calling card or on the
20 packaging material accompanying a prepaid calling
21 card.

22 **SEC. 3. REQUIRED DISCLOSURES OF PREPAID CALLING**
23 **CARDS.**

24 (a) **REQUIRED DISCLOSURE.**—Any prepaid calling
25 card provider or prepaid calling card distributor shall dis-

1 close clearly and conspicuously the following information
2 relating to the terms and conditions of the prepaid calling
3 card:

4 (1) The name of the prepaid calling card pro-
5 vider and such provider's customer service telephone
6 number and hours of service.

7 (2)(A) The number of domestic interstate min-
8 utes available from the prepaid calling card and the
9 number of available minutes for all international
10 preferred destinations served by the prepaid calling
11 card at the time of purchase; or

12 (B) the dollar value of the prepaid calling card,
13 the domestic interstate rate per minute provided by
14 such card, and the applicable per minute rates for
15 all international preferred destinations served by the
16 prepaid calling card at the time of purchase.

17 (3)(A) The applicable per minute rate for all in-
18 dividual international destinations served by the card
19 at the time of purchase; or

20 (B) a toll-free customer service number and
21 website where a consumer may obtain the informa-
22 tion described in subparagraph (A) and a statement
23 that such information may be obtained through such
24 toll-free customer service number and website.

1 (4) The following terms and conditions per-
2 taining to, or associated with, the use of the prepaid
3 calling card:

4 (A) Any applicable fees associated with the
5 use of the prepaid calling card.

6 (B) A description of any additional charges
7 associated with the use of the prepaid calling
8 card and the amount of such charges.

9 (C) Any limitation on the use or period of
10 time for which the promoted or advertised min-
11 utes or rates will be available.

12 (D) Applicable policies relating to refund,
13 recharge, and any predetermined decrease in
14 value of such card over a period of time.

15 (E) Any expiration date applicable to the
16 prepaid calling card or the minutes available
17 with such calling card.

18 (b) LOCATION OF DISCLOSURE AND LANGUAGE RE-
19 QUIREMENT.—

20 (1) CLEAR AND CONSPICUOUS.—

21 (A) CARDS.—The disclosures required
22 under subsection (a) shall be printed in plain
23 English language (except as provided in para-
24 graph (2)) in a clear and conspicuous manner
25 and location on the prepaid calling card. If the

1 card is enclosed in opaque packaging, such dis-
2 closures also shall be printed on the outside
3 packaging of the card.

4 (B) ONLINE SERVICES.—In addition to the
5 requirements under subparagraph (A), in the
6 case of a prepaid calling card that consumers
7 purchase via the Internet, the disclosures re-
8 quired under subsection (a) shall be displayed
9 in plain English language (except as provided in
10 paragraph (2)) in a clear and conspicuous man-
11 ner and location on the Internet website that
12 the consumer must access prior to purchasing
13 such card.

14 (C) ADVERTISING AND OTHER PRO-
15 MOTIONAL MATERIAL.—Any advertising for a
16 prepaid calling card that contains any represen-
17 tation, expressly or by implication, regarding
18 the dollar value, the per minute rate, or the
19 number of minutes provided by the card shall
20 include in a clear and conspicuous manner and
21 location all the disclosures described in sub-
22 section (a).

23 (2) FOREIGN LANGUAGES.—If a language other
24 than English is prominently used on a prepaid call-
25 ing card, its packaging, or in point-of-sale adver-

1 tising, Internet advertising, or promotional material
2 for such card, the disclosures required by this sec-
3 tion shall be disclosed in that language on such card,
4 packaging, advertisement, or promotional material.

5 (c) MINUTES ANNOUNCED, PROMOTED, OR ADVER-
6 TISED THROUGH VOICE PROMPTS.—Any information pro-
7 vided to a consumer by any voice prompt given to the con-
8 sumer at the time the consumer uses the prepaid calling
9 card relating to the remaining value of the calling card
10 or the number of minutes available from the calling card
11 shall be accurate, taking into account the application of
12 the fees and additional charges required to be disclosed
13 under subsection (a).

14 (d) DISCLOSURES REQUIRED UPON PURCHASE OF
15 ADDITIONAL MINUTES.—If a prepaid calling card permits
16 a consumer to add value to the card or purchase additional
17 minutes after the original purchase of the prepaid calling
18 card, any changes to the rates or additional charges re-
19 quired to be disclosed under subsection (a) may apply only
20 to the additional minutes to be purchased and shall be
21 disclosed to the consumer before the completion of such
22 purchase.

1 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
2 **SION.**

3 (a) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—

4 A violation of section 3 shall be treated as a violation of
5 a rule defining an unfair or deceptive act or practice pre-
6 scribed under section 18(a)(1)(B) of the Federal Trade
7 Commission Act (15 U.S.C. 57a(a)(1)(B)).

8 (b) AUTHORITY OF THE COMMISSION.—The Commis-
9 sion shall enforce this Act in the same manner and by
10 the same means as though all applicable terms and provi-
11 sions of the Federal Trade Commission Act were incor-
12 porated into and made a part of this Act. Notwithstanding
13 any provision of the Federal Trade Commission Act or any
14 other provision of law and solely for purposes of this Act,
15 common carriers subject to the Communications Act of
16 1934 (47 U.S.C. 151 et seq.) and any amendment thereto
17 shall be subject to the jurisdiction of the Commission.

18 (c) RULEMAKING AUTHORITY.—Not later than 180
19 days after the date of enactment of this Act, the Commis-
20 sion shall, in consultation with the Federal Communica-
21 tions Commission and in accordance with section 553 of
22 title 5, United States Code, issue regulations to carry out
23 this Act. In promulgating such regulations, the Commis-
24 sion shall—

25 (1) take into consideration the need for clear
26 disclosures that provide for easy comprehension and

1 comparison by consumers, taking into account the
2 size of prepaid calling cards; and

3 (2) give due consideration to the views of the
4 Federal Communications Commission with regard to
5 matters for which that Commission has particular
6 expertise and authority and shall take into consider-
7 ation the views of States.

8 In promulgating such regulations, the Commission shall
9 not issue regulations that otherwise affect the rates,
10 terms, and conditions of prepaid calling cards.

11 (d) SAVINGS PROVISION.—Nothing in this Act shall
12 be construed to limit the authority of the Commission
13 under any other provision of law. Except to the extent ex-
14 pressly provided in this Act, nothing in this Act shall be
15 construed to alter or affect the exemption for common car-
16 riers provided by section 5(a)(2) of the Federal Trade
17 Commission Act (15 U.S.C. 45(a)(2)). Nothing in this Act
18 is intended to limit the authority of the Federal Commu-
19 nications Commission.

20 **SEC. 5. STATE ENFORCEMENT.**

21 (a) IN GENERAL.—

22 (1) CIVIL ACTIONS.—In any case in which the
23 attorney general of a State, a State utility commis-
24 sion, or other consumer protection agency has rea-
25 son to believe that an interest of the residents of

1 that State has been or is threatened or adversely af-
2 fected by the engagement of any person in a practice
3 that is prohibited under this Act, the State utility
4 commission or other consumer protection agency, if
5 authorized by State law, or the State, as *parens*
6 *patriae*, may bring a civil action on behalf of the
7 residents of that State in a district court of the
8 United States of appropriate jurisdiction, or any
9 other court of competent jurisdiction to—

10 (A) enjoin that practice;

11 (B) enforce compliance with this Act;

12 (C) obtain damage, restitution, or other
13 compensation on behalf of residents of the
14 State; or

15 (D) obtain such other relief as the court
16 may consider to be appropriate.

17 (2) NOTICE TO THE COMMISSION.—

18 (A) IN GENERAL.—Before filing an action
19 under paragraph (1), the State shall provide to
20 the Commission—

21 (i) written notice of the action; and

22 (ii) a copy of the complaint for the ac-
23 tion.

24 (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)
2 shall not apply with respect to the filing of
3 an action by a State under this subsection,
4 if the attorney general or other appropriate
5 officer determines that it is not feasible to
6 provide the notice described in that sub-
7 paragraph before the filing of the action.

8 (ii) NOTIFICATION.—In an action de-
9 scribed in clause (i), the State shall pro-
10 vide notice and a copy of the complaint to
11 the Commission at the same time as the
12 State files the action.

13 (b) INTERVENTION BY COMMISSION.—

14 (1) IN GENERAL.—On receiving notice under
15 subsection (a)(2), the Commission shall have the
16 right to intervene in the action that is the subject
17 of the notice.

18 (2) EFFECT OF INTERVENTION.—If the Com-
19 mission intervenes in an action under subsection (a),
20 it shall have the right—

21 (A) to be heard with respect to any matter
22 that arises in that action;

23 (B) to remove the action to the appro-
24 priate United States District Court; and

25 (C) to file a petition for appeal.

1 (c) CONSTRUCTION.—For purposes of bringing any
2 civil action under subsection (a), nothing in this section
3 shall be construed to prevent an attorney general of a
4 State, a State utility commission, or other consumer pro-
5 tection agency authorized by State law from exercising the
6 powers conferred on the attorney general or other appro-
7 priate official by the laws of that State to—

8 (1) conduct investigations;

9 (2) administer oaths or affirmations;

10 (3) compel the attendance of witnesses or the
11 production of documentary and other evidence; or

12 (4) enforce any State law.

13 (d) ACTION BY THE COMMISSION MAY PRECLUDE
14 STATE ACTION.—In any case in which an action is insti-
15 tuted by or on behalf of the Commission for violation of
16 this Act, or any regulation issued under this Act, no State
17 may, during the pendency of that action, institute an ac-
18 tion under subsection (a) against any defendant named
19 in the complaint in that action for violation of this Act
20 or regulation.

21 (e) VENUE; SERVICE OF PROCESS.—

22 (1) VENUE.—Any action brought under sub-
23 section (a) may be brought in the district court of
24 the United States that meets applicable require-

1 ments relating to venue under section 1391 of title
2 28, United States Code.

3 (2) SERVICE OF PROCESS.—In an action
4 brought under subsection (a), process may be served
5 in any district in which the defendant—

6 (A) is an inhabitant; or

7 (B) may be found.

8 (f) LIMITATION.—No prepaid calling card distributor
9 who is a retail merchant or seller of prepaid calling cards,
10 who, with respect to such cards, is exclusively engaged in
11 point-of-sale transactions may be liable for damages in an
12 action authorized under this section unless such dis-
13 tributor acted with actual knowledge that the act or prac-
14 tice giving rise to such action is unfair or deceptive and
15 is unlawful under this Act.

16 **SEC. 6. APPLICATION.**

17 This Act shall apply to—

18 (1) any prepaid calling card issued or placed
19 into the stream of commerce beginning 90 days after
20 the date on which final regulations are promulgated
21 pursuant to section 4(c); and

22 (2) any advertising, promotion, point-of-sale
23 material or voice prompt regarding a prepaid calling
24 card that is disseminated beginning 90 days after

1 the date on which final regulations are promulgated
2 pursuant to section 4(c).

3 If the Commission determines that it is not feasible for
4 prepaid calling card providers or distributors to comply
5 with the requirements of this Act with respect to prepaid
6 calling cards issued or placed into the stream of commerce
7 after such 90-day period, the Commission may extend
8 such period by not more than an 90 additional days.

9 **SEC. 7. EFFECT ON STATE LAWS.**

10 After the date on which final regulations are promul-
11 gated pursuant to section 4(c), no State or political sub-
12 division of a State may establish or continue in effect any
13 provision of law that prescribes disclosure requirements
14 with respect to prepaid calling cards unless such require-
15 ments are identical to the requirements of section 3.

16 **SEC. 8. G.A.O. STUDY.**

17 Beginning 2 years after the date on which final regu-
18 lations are promulgated pursuant to section 4(c), the
19 Comptroller General shall conduct a study of the effective-
20 ness of this Act and the disclosures required under this
21 Act and shall submit a report of such study to Congress
22 not later than 3 years after the date of enactment of this
23 Act.

